

IN THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION.

Civil Action No. 43-C-1295.

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

THE RAIL JOINT COMPANY, ET AL., (McKenna Process  
Company and George Langford, Impleaded),

DEFENDANTS.

JUDGMENT

This cause having heretofore come on to be heard upon the complaint herein filed on the 21st day of December, 1943, and the answers of the defendants thereto; and certain of the defendants having entered into a consent decree; and this cause having come on for trial as to the defendants McKenna Process Company and George Langford before the Honorable John P. Barnes, United States District Judge, and the Court having heard evidence and oral arguments of counsel and having received the briefs of the parties, and having duly made and

entered findings of fact and conclusions of law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure;

NOW, UPON CONSIDERATION THEREOF, and upon motion of plaintiff by Wendell Berge, Assistant Attorney General, Willis L. Hotchkiss, Special Assistant to the Attorney General, and Ewart Harris, Special Attorney, for relief in accordance with the prayer of the Complaint; and the defendants McKenna Process Company and George Langford having appeared by their attorneys John K. Newhall and Charles F. Clyne;

IT IS FOUND THAT:

1. The Court has jurisdiction of the subject matter hereof and of the defendants, and the Complaint states a cause of action against the defendants under Sections 1 and 2 of the Act of Congress of July 2, 1890, commonly known as the Sherman Act.

2. During the time covered by the Complaint and up to the date of the filing thereof, the defendants McKenna Process Company and George Langford (a) combined and conspired with the other defendants named in the Complaint to restrain interstate trade and commerce in reforming worn rail joint bars, in violation of Section 1 of the Sherman Act; (b) combined and conspired to monopolize trade and commerce in reforming worn rail joint bars in violation of Section 2 of the Sherman Act; and (c) monopolized the commercial reforming of worn rail joint bars in violation of Section 2 of the Sherman Act.

3. The said defendants used the following unlawful means and methods for carrying out and effectuating such conspiracy:

(a) They entered into agreements with each other, establishing a pool of patents; provided for the strengthening of such pool through cooperative action in securing additional patents; issued licenses based upon such pooled patents, and by means of such patent and licensing structure, fixed prices and suppressed competition in the reforming of rail joint bars;

(b) The defendants agreed among themselves on the issuance of licenses; as to who should receive licenses; and on the terms which should be incorporated in such licenses, including the prices to be fixed, the establishment of protected territorial zones, and the imposition of royalties on all bars reformed;

(c) The defendants used the pooled patents to harass unlicensed competitors by infringement suits and threats of suits;

(d) The defendants unlawfully exceeded the privileges vested by statute in patentees through using patents on processes and machinery used in reforming to fix prices on the reforming of worn rail joint bars;

(e) The defendants unlawfully, in the licenses issued by them, exceeded the privileges vested by statute in patentees through requiring that the licensees not advocate, advertise, or solicit the use of reformed bars on new rail;

(f) The defendants unlawfully exceeded the privileges vested by statute in patentees through incorporating in licenses issued by them provisions which fixed the territorial limits, within which no other plants should be licensed to engage in the reforming of worn rail joint bars, thereby creating in each of such territorial zones a monopoly of the business of reforming worn rail joint bars;

(g) The defendants issued and received licenses, pursuant to prior agreement among the defendants, containing substantially identical provisions as to price, territorial allocation, and the imposition of blanket royalties on all bars reformed, each of the defendants and each of the licensees being informed of the issuance of each of such licenses and of the terms contained therein;

(h) The defendants threatened to file and filed infringement suits against unlicensed competitors for the purpose of compelling them to accept licenses,

participate in the conspiracy, and move into unal-located territory and maintain prices.

4. The licenses and sublicenses in evidence in this case, including the license from McKenna Process Company to the Blatchford Company are illegal as having been entered into in furtherance of an illegal combination and conspiracy to restrain interstate trade and commerce in the reforming of worn rail joint bars and to monopolize the commercial reforming of such bars in violation of Sections 1 and 2 of the Sherman Antitrust Act.

5. The patents in evidence in this case which were utilized in the patent pool, including the patents issued to the defendant George Langford were unlawfully used by the defendants beyond the scope of the privilege law-fully vested in a patentee by statute, for the purpose of restraining interstate trade and commerce in the reform- ing of worn rail joint bars, and to create a monopoly in such commerce.

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The agreements, licenses, and sublicenses in evidence in this case, and listed in Schedule A attached hereto and made a part of this decree, are hereby declared to be un- lawful and void;

2. The defendants McKenna Process Company and George Langford are hereby enjoined from continuing in force any of such licenses or sublicenses, issued under the agreements in evidence in this case, and listed in the hereinbefore referred to Schedule A, and from reinstating said licenses or sublicenses, or any of them, that may have been cancelled prior to the entry of the decree herein ;

3. The defendants McKenna Process Company and George Langford are, and each of them is, hereby en- joined from proceeding to enforce any of the covenants contained in said licenses or sublicenses or agreements; Provided, however, that no injunction shall be issued restraining the defendants, McKenna Process Company and George Langford, from prosecuting the present pending proceedings in the Circuit Court of Kane County,

Illinois, entitled *McKenna Process Company v. Blatch- ford Corporation*, General Number 64,433.

4. The defendants McKenna Process Company and George Langford are, and each of them is, enjoined from instituting or threatening to institute any proceedings, based on alleged infringements occurring to the date of the filing of this decree, of any of the patents in evidence which were involved in any of the agreements between the defendants relating to the pooling of patents and the creation of a licensing structure based on such pooled patents. The patents herein mentioned are set forth in Schedule B attached hereto and made a part of this decree.

Dated this 25th day of June, 1946.

By the Court:

BARNES,  
*Judge.*

SCHEDULE A

AGREEMENTS, LICENSES, AND SUBLICENSES  
DECLARED TO BE UNLAWFUL AND VOID

<i>Date Agreement, License or Sublicense Executed</i>	<i>Parties to the Agreement</i>
Sept. 12, 1931	McKenna Process Company (Licensor) The Rail Joint Company (Licensee) (Designated as License Agreement "A")
Sept. 12, 1931	The Rail Joint Company (Licensor) McKenna Process Company (Licensee) (Designated as License Agreement "B")
Sept. 12, 1931	The Rail Joint Company (Licensor) McKenna Process Company (Licensee) (Designated as License Agreement "B")
Oct. 19, 1931	Woodings-Verona Tool Works (Licensor) The Rail Joint Company (Licensee)
Oct. 19, 1931	The Rail Joint Company (Licensor) Woodings-Verona Tool Works (Licensee)
Oct. 5, 1931	The Rail Joint Company (Licensor) Tredegar Company (Licensee)
Oct. 7, 1931	The Rail Joint Company (Licensor) Rail Joint Reforming Company (Licensee)
Oct. 15, 1931	The Rail Joint Company (Licensor) Mississippi Valley Structural Steel Company (Licensee)
Sept. 28, 1931	Agreement between The Rail Joint Company and Woodings-Verona Tool Works supple- menting the License of October 19, 1931, entered into between Rail Joint as Licensor and Woodings as Licensee.

(Cont'd.)

<i>Date Agreement, License or Sublicense Executed</i>	<i>Parties to the Agreement</i>
Oct. 26, 1931	The Rail Joint Company (Licensor) Mohawk Equipment Co. (Licensee)
Nov. 3, 1931	The Rail Joint Company (Licensor) Ray O. Shaffer (Licensee)
Nov. 18, 1931	The Rail Joint Company (Licensor) Texas Rail Joint Company (Licensee)
Oct. 31, 1932	McKenna Process Company (Licensor) Blatchford Corporation (Licensee)
Oct. 31, 1932	Supplement to License Agreements "B" and "C" entered into between The Rail Joint Company and McKenna Process Company
Oct. 11, 1935	McKenna Process Company (Licensor) The Rail Joint Company (Licensee)
Dec. 15, 1935	Agreement between The Rail Joint Company and Woodings-Verona Tool Works supple- menting and amending their agreement of October 19, 1931
Feb. 1, 1936	The Rail Joint Company (Licensor) Youngstown Steel Car Company (Licensee)
April 1936	Agreement between The Rail Joint Company and McKenna Process Company cancelling License Agreement "B" and amending Agree- ment "A"
May 24, 1939	George Langford (Licensor) The Rail Joint Company (Licensee)

(Cont'd.)

<i>Patentee</i>	<i>Patent Number</i>	<i>Date</i>
Langford	1, 799, 381	April 7, 1931
"	1, 799, 382	April 7, 1931
"	1, 804, 792	May 12, 1931
"	1, 808, 466	June 2, 1931
"	Reissue	
	18, 165	Aug. 25, 1931
"	1, 808, 467	June 2, 1931
"	1, 808, 468	June 2, 1931
"	Reissue	
	20, 874	Oct. 4, 1938
"	1, 814, 835	July 14, 1931
"	1, 833, 026	Nov. 24, 1931
"	1, 836, 032	Dec. 15, 1931
"	1, 836, 033	Dec. 15, 1931
"	1, 842, 412	Jan. 26, 1932
"	1, 858, 401	May 17, 1932
"	1, 865, 194	June 28, 1932
"	1, 883, 982	Oct. 25, 1932
"	1, 890, 687	Dec. 13, 1932
"	2, 034, 043	Mar. 17, 1936
"	2, 034, 044	Mar. 17, 1936
"	2, 034, 045	Mar. 17, 1936
"	2, 034, 046	Mar. 17, 1936
"	2, 060, 996	Nov. 17, 1936
"	2, 134, 449	Oct. 25, 1938
"	2, 134, 450	Oct. 25, 1938

SCHEDULE B

LETTERS PATENT AND REISSUES THEREOF  
SUBJECT TO TERMS OF DECREE

<i>Patentee</i>	<i>Patent Number</i>	<i>Date</i>
Langford	1, 562, 423	Nov. 17, 1925
"	Reissue	Jan. 14, 1930
"	17, 561	
"	Reissue	Feb. 18, 1930
"	17, 596	
"	Reissue	
"	18, 213	Sept. 29, 1931
"	Reissue	July 9, 1935
"	19, 638	
"	1, 659, 776	Feb. 21, 1928
"	1, 712, 506	May 14, 1929
"	1, 724, 031	Aug. 13, 1929
"	1, 732, 650	Oct. 22, 1929
"	Reissue	Mar. 24, 1931
"	18, 011	
"	1, 757, 774	May 6, 1930
"	Reissue	Feb. 10, 1931
"	17, 963	
"	1, 759, 458	May 20, 1930
"	1, 799, 380	April 7, 1931
"	Reissue	
"	18, 568	Aug. 16, 1932